

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-211001**DATE:** November 15, 1983**MATTER OF:** Captain Steven B. Sonnenberg, USMC**DIGEST:**

1. Under the statute authorizing per diem and other travel allowances for service members on official travel assignments, no per diem at all is ordinarily payable for periods of an assignment that are properly classified as "field duty," since ordinarily service members have no additional living expenses during such periods. Superseded provisions in the Joint Travel Regulations are not interpreted as making sleeping and subsistence conditions the sole criteria for determining whether field duty is involved because the statutory authority for payments of per diem does not authorize denial without reference to the type of duty being performed.
2. In 1982 a group of marines on a temporary duty assignment at Fort Bragg, North Carolina, were billeted in on-post barracks and received their meals in adjacent dining halls. In determining that the assignment was "field duty" for which no per diem was payable the appropriate authority noted that the buildings used were not suitable for regular use, one of the criteria in the regulations then in effect under which "field duty" determinations could be justified. The fact that the facilities were regular barracks and messhalls does not preclude a determination that they were occupied under field duty conditions.

The question presented is whether Captain Steven B. Sonnenberg, USMC, may receive per diem claimed for a temporary duty assignment at Fort Bragg, North Carolina, notwithstanding an administrative determination that the assignment constituted "duty under field conditions." In

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view of the fact that the regulations concerning field duty determinations did not clearly preclude this determination, we affirm the administrative action and deny Captain Sonnenberg's claim for per diem.¹

Facts

In January 1982 Captain Sonnenberg was selected to participate in the joint service readiness exercise designated as "Gallant Knight 82." At that time his permanent duty assignment was at Marine Corps Air Station El Toro, Santa Ana, California. By orders dated January 19, 1982, he and other marines stationed at El Toro who had also been selected were directed to proceed to Fort Bragg, North Carolina, to perform 15 days of temporary additional duty as participants in the exercise, and then to return to El Toro when the exercise was completed. The travel orders provided "Per diem is authorized, except for days which are designated as 'duty in the field'. Such periods will be endorsed on orders at termination of TAD." They also provided "'These orders involve participation in field duty, as defined in the JTR and Navy Travel Instructions.'"

In compliance with their orders, Captain Sonnenberg and the other marines traveled as a group from El Toro to Fort Bragg on January 21, 1982. When they arrived at Fort Bragg they were assigned billets in several on-post Army barracks. These barracks were two-story buildings that had been constructed during World War II. In addition, the marines were assigned two other buildings of the same age which were located immediately adjacent to their barracks to use as their messhalls. The marines used the buildings assigned to them as their living

¹ This action is in response to a request from the Disbursing Officer, Marine Corps Air Station El Toro, Santa Ana, California, for an advance decision concerning the propriety of issuing payment on a travel voucher submitted by Captain Sonnenberg. The request was forwarded here on March 1, 1983, by the Department of Defense Per Diem, Travel and Transportation Allowance Committee after being assigned PDTATAC Control No. 83-8.

quarters and dining halls throughout the 2-week period of the joint service exercise. They returned to El Toro from Fort Bragg on February 3, 1982, when the exercise was completed.

After the marines returned from their assignment at Fort Bragg, their temporary additional duty orders were endorsed to reflect that they had performed "duty under field conditions" during the entire period of the assignment. This endorsement was based on a determination of conditions that had been made by the senior officials in charge of the exercise.

Issues Presented

The administrative determination that the marines' assignment at Fort Bragg constituted "duty under field conditions," if correct, would operate to preclude payment of per diem allowances to them. Captain Sonnenberg filed a claim for per diem with his disbursing office because he believed that the determination was incorrect under the regulations then in effect, since the marines had used permanent barracks and dining halls during their assignment at Fort Bragg.

The officials responsible for the determination subsequently suggested that the "field duty" designation had been correct under the regulations then in effect because the barracks and dining halls used by the marines at Fort Bragg were "not suitable for regular occupancy" or "regular meal service," and they added this explanation:

"* * * These buildings are of similar construction to others at Ft Bragg that are used as permanent facilities. However, the buildings assigned for the use of [the marines] have not been renovated and are not utilized by Ft Bragg for regular occupancy or permanent messing of soldiers."

Statute and Regulations

Under regulations prescribed by the Secretaries concerned, a member of a uniformed service is entitled to

travel and transportation allowances for travel performed under orders away from his designated post of duty.
37 U.S.C. § 404.

Implementing regulations issued by the service secretaries are contained in Volume 1 of the Joint Travel Regulations (1 JTR). Those regulations authorize payment of per diem for all periods of temporary duty to defray the cost of quarters, meals, and other related incidental expenses. 1 JTR, paragraphs M4200 and M4202-1. The regulations prescribe per diem rates, with appropriate reductions when the service member is furnished with Government quarters and with meals in a Government mess. 1 JTR, paragraph M4205.

However, the Joint Travel Regulations generally prohibit payment of any per diem to a service member for periods when he is performing field duty during a travel assignment. Prior to October 1, 1980, the regulations stated that, "No per diem allowance is payable while a member is participating in maneuvers, field exercises, simulated war games, training encampments for the reserve components or Reserve Officer Training Corps students, and other similar activities, including duty as observer or umpire." See 1 JTR, paragraph M4201-8 (change 327, May 1, 1980, superseded).

The Joint Travel Regulations were revised by change 332 of October 1, 1980, to rescind paragraph M4201-8 and to replace it with this new paragraph:

"M4213 MANEUVERS, FIELD EXERCISES,
SIMULATED WAR GAMES, TRAINING
ENCAMPMENTS, AND OTHER SIMILAR
ACTIVITIES

"A member participating in maneuvers, field exercises, war games, training encampments for the Reserve Components or ROTC students, and similar activities, including duty as observer or umpire, shall be entitled to per diem as follows:

* * * * *

"b. Per Diem Is Not Authorized
Under Field Conditions When:

- "1. both Government rations in kind, including field rations, and Government quarters are available, whether or not such rations and quarters are used * * *."

In addition, change 332 added this definition to Appendix J of the regulations:

"DUTY UNDER FIELD CONDITIONS--A member is performing duty under field conditions when sleeping accommodations and subsistence are available under these conditions:

- "1. Sleeping Accommodations Under Field Conditions. Accommodations normally associated with duty under field conditions (such as tentage, dugouts, lean-tos, other structures not suitable for regular occupancy) for which no service charge is made.
- "2. Subsistence Under Field Conditions. Rations prepared in a field kitchen or dining facility (including kitchen and dining facilities provided under a mobility concept or other facilities not suitable for regular meal service) or cold prepared rations common to the operation and made available to the participants."

On March 1, 1983, these provisions were in turn rescinded by change 361 to the Joint Travel Regulations. Change 361 added paragraph M4201-19 to the regulations, which is currently in effect and which provides that a

service member on field duty is not entitled to per diem except in certain prescribed circumstances. The change also added the following definition of "field duty" to Appendix J of the regulations:

"FIELD DUTY - All duty under orders with troops operating against an enemy, actual or potential; or serving with troops participating in maneuvers, war games, field exercises, or similar types of operations, and

"1. the member is subsisted in a Government mess or with an organization drawing field rations, and is quartered in accommodations normally associated with field exercises
* * * ."

Discussion

The per diem allowance authorized by statute is for the purpose of reimbursing service members for their "actual and necessary expenses" of subsistence while in a travel status away from their permanent duty stations. 37 U.S.C. § 404(d)(2). Under the implementing regulations, a service member on a routine temporary duty assignment is generally paid a per diem allowance to cover his additional living expenses. If a member in that situation is furnished quarters and meals by the Government, a per diem allowance at a substantially reduced rate is still payable to cover his other incidental subsistence expenses for laundry service, etc. See, e.g., 31 Comp. Gen. 501 (1952); and Matter of Campbell, B-205354, June 2, 1982.

However, we have long held that under the governing provisions of statute no per diem at all may ordinarily be authorized for a service member performing field duty or duty under field conditions, since ordinarily the member has no additional living expenses whatever. That is, the member in that situation has no additional expenses for meals or lodgings, and ordinarily he has no need or occasion to make any out-of-pocket expenditures to cover the other incidental subsistence costs normally

associated with official travel. See, e.g., 35 Comp. Gen. 555 (1956); and compare Matter of Per Diem for Multinational Force, B-209342, July 11, 1983.

As indicated, since 1980 there have been two changes to provisions of the Joint Travel Regulations describing assignments which are to be classified as "field duty" or "duty under field conditions." Under the regulations in effect prior to October 1980, as well as those currently in effect which were adopted on March 1, 1983, the classification is based on a determination of whether the basic character and conditions of the assignment come within the generally recognized and accepted meaning of the term "field duty." See 44 Comp. Gen. 405 (1965); and compare Matter of Davis, B-209342, June 1, 1983.

The definition of field duty in Appendix J, 1 JTR (change 332, October 1, 1980, superseded), which was in effect at the time of Captain Sonnenberg's assignment at Fort Bragg in 1982, emphasizes suitability of sleeping accommodations and subsistence or messing facilities as the criteria for determining the existence of "field duty" conditions. However, language of paragraph M4213, 1 JTR, in force at that time recognizes that the nature of the duty is also for consideration. Sleeping and subsistence criteria in themselves do not furnish a complete basis for determining whether field conditions are present so as to warrant a determination that no per diem during an official travel assignment will be allowed. Therefore, we do not read those regulations as prescribing the sleeping and subsistence criteria as the sole criteria for determining whether field duty was involved. Nevertheless, those criteria were factors which could properly be considered in making the determination, and a finding that sleeping and subsistence conditions were not suitable for regular use would tend to support a determination that duty under field conditions prevailed.

The primary responsibility for making determinations of the type in question rests with the concerned military commanders who are most closely familiar with the actual facts and circumstances, and we have consistently held that their determinations regarding existing conditions as incorporated by endorsement in travel orders are to be

accepted as correct unless shown by concrete factual information to be clearly erroneous. See, e.g., 37 Comp. Gen. 683, 685 (1958); 44 Comp. Gen. 405, cited above; 44 Comp. Gen. 740, 743 (1965); and Matter of Komm, B-184504, April 4, 1977. In the present case, Captain Sonnenberg's orders directed participation in a combat readiness exercise involving field duty, and the correctness of the field duty determination contained in the endorsement to those orders is questioned solely on the basis of the sleeping and subsistence facilities used in the exercise.

Since we have concluded that the sleeping and subsistence facilities provided Captain Sonnenberg during the period of temporary duty involved did not preclude a determination that field duty was involved, we do not question the determination that the period was in fact a period of field duty. Accordingly, his claim for per diem for the period he was on duty at Fort Bragg may not be allowed.²

Milton J. Asolan

Acting Comptroller General
of the United States

² The submitted voucher may not be approved for payment and will be retained here.